

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

RONALD J. LETULIER

CIVIL ACTION NO. 09-1382

VERSUS

JUDGE DOHERTY

BURL CAIN, WARDEN

MAGISTRATE JUDGE HILL

ORDER REGARDING APPOINTMENT OF COUNSEL

Before the petitioner's Court is the Motion for Appointment of Counsel. By this Motion, petitioner moves for the appointment of K. Eric Gisleson, Charles D. Marshall, III and Gary Clements (as "Of Counsel") to assist him in the preparation of pleadings for, and litigation of, his federal Petition for Writ of *Habeas Corpus*, retroactive to March 6, 2009.

PROCEDURAL HISTORY

The Motion recites the following procedural history. Petitioner pled guilty to first degree murder on December 17, 1996 in the Sixteenth Judicial District Court for St. Martin Parish. On January 21 1997, petitioner was sentenced to death. His conviction and death sentence were affirmed by the Louisiana Supreme Court on July 8, 1998. *State v. Letulier*, 750 So.2d 784 (La. 1998).

On April 5, 1999, petitioner filed a *pro se* Application for Post-Conviction Relief. Following the filing of two counseled supplemental Applications, and an evidentiary hearing, the Application was ultimately denied by the Louisiana Supreme Court on March 6, 2009. Pursuant to 28 U.S.C. § 2254, petitioner filed a Petition for Writ of *Habeas Corpus* in this Court on August 5, 2009.

Attorney K. Eric Gisleson was appointed to represent petitioner in his state post-conviction proceedings, and Charles D. Marshall, III assisted in those proceedings. Both K. Eric Gisleson and Charles D. Marshall, III, as well as Gary Clements in “Of Counsel” capacity, have agreed to represent petitioner in these federal post-conviction proceedings. Both K. Eric Gisleson and Charles D. Marshall, III assisted petitioner with the preparation of his federal Petition for Writ of *Habeas Corpus*.

DISCUSSION

Rules governing appointment of counsel in *habeas* proceedings initiated pursuant to 28 U.S.C. § 2254 are governed by 18 U.S.C. § 3599.¹ *See Harbison v. Bell*, 129 S.Ct. 1481, 1485-1486 (2009). Pursuant to § 3599(a)(2), a financially eligible person seeking to vacate or set aside a death sentence under 28 U.S.C. § 2254 is entitled to appointment of one or more qualified attorneys. A qualified attorney is one who has been admitted to practice in the court of appeals, in this case the Fifth Circuit Court of Appeals, for not less than five years, and who has not less than three years experience in the handling of appeals in that court in felony cases. 18 U.S.C. § 3599(c).

If two attorneys are appointed to represent a habeas petitioner, the statute requires that only one meet the requirements of § 3599(c). Subsection (d) apparently permits the court, for good cause, to appoint another attorney who does not necessarily meet the requirements of subsection (c), based on the attorney’s “background, knowledge, or experience [which] would otherwise enable him or her to properly represent the

¹Petitioner cites former Title 21 U.S.C. Section 848(q)(4)(B) in support of his Motion. In March, 2006, Congress repealed Title 21 U.S.C. § 848(q) and simultaneously re-enacted same in substantially similar form as Title 18 U.S.C. § 3599. *See Wood v. Quarterman*, 572 F.Supp.2d 814, 820 (W.D. Tex. 2008).

defendant, with due consideration to the seriousness of the possible penalty and to the unique and complex nature of the litigation.” See *United States v. Sampson*, 2008 WL 2563374, *1 (D. Mass. 2008) citing *In re Lindsey*, 875 F.2d 1502, 1507, n.. 3 (11th Cir.1989) (same regarding § 848(q)(6), which had identical language). While petitioner’s Motion contains various information about each attorney’s background and experience, the Motion is devoid of any information regarding their qualifications under § 3599(c), or why those requirements should be waived in this case.

IT IS THEREFORE ORDERED that on or before ten (10) days from entry of this Order, either K. Eric Gisleson, Charles D. Marshall, III or Gary Clements shall file an affidavit attesting to his and/or proposed co-counsel's qualifications to represent Petitioner pursuant to § 3599(c) or (d).

THE CLERK IS DIRECTED to fax and serve a copy of the instant Order by certified mail on K. Eric Gisleson, Charles D. Marshall, III and Gary Clements .

Signed in Lafayette, Louisiana, this 6th day of August, 2009.


C. MICHAEL HILL
UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION**

RONALD J. LETULIER

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